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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,433	08/25/2003	Walt Froloff	Emo2	4543

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Walt Froloff
273D Searidge Rd
Aptos, CA 95003

EXAMINER

NGUYEN, CAO H

ART UNIT	PAPER NUMBER
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2173

MAIL DATE	DELIVERY MODE
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09/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,433

Applicant(s)

FROLOFF, WALT

Examiner

Cao (Kevin) Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination (RCE)

This Office action is responsive to the Request for Continued Examination (RCE) filed under 37 CFR §1.53(d) for the instant application on 05/24/07. Applicants have properly set forth the RCE, which has been entered into the application, and an examination on the merits follows herewith.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 10 and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1, 10 and 16 are not tangible. The preamble of independent claims 1, 10 and 16 recite " A system and method of communicating emotive content comprising", which is directed to software, per se, lacking any hardware to enable any functionality to be realized. The claimed features and elements of independent claims 1, 10 and 16 do not include hardware components or features that are necessarily implemented in hardware. Therefore, the claimed features of claims 1, 10 and 16 are actually a software, or at

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best, directed to an arrangement of software, and software claimed by itself, without being executed or implemented on a computer medium, is intangible.

Further, the subject matter claimed in claims 1, 10 and 16 fall within the judicially defined exceptions to patentable subject matter, i.e., law of nature, nature phenomena, or abstract ideas.

To expedite a complete examination of the instant application, the claims rejected under 35U.S.C. 101 (nonstatutory) above are further rejected as set forth below in anticipation of the applicant amending these claims to place them within the four statutory categories of invention.

Allowable Subject Matter

Claims 17 and 18 are allowed over the prior arts of record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

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reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Hatlelid (US Patent No. 6,522,333).

Regarding claims 1 and 16, Hatlelid et al. discloses system and method of communicating emotive content comprising emotive vectors, each motive vector comprising an emotive state and an associated emotive intensity normalized to the author [..to select a personality type for the visual representation and receives a mood intensity command the selects a mood intensity; see col. 11, lines 1-35; and text occur after the gesture the application module determines whether the gesture requires a facial movement; see col. 21, lines 1-50]; with associated text embedded in electronic device [..a set of characteristic of the visual representing emotional contexts within which data can be to be iterpret; see col. 2, lines 1-35].

Regarding claim 2, Hatlelid et al. discloses comprising the encoding of emotive content into standard computing device communication formats [..predefined categories to be for natural processing of text; see col. 2, lines 38-64].

Regarding claim 3, Hatlelid et al. discloses comprising the encoding of the emotive content into textual communications [..an extrovert personality selection will generate behavioral movements which are dynamic and energetic; see col. 3, lines 6-18].

Regarding claim 4, Hatlelid et al. discloses comprising the decoding of emotive content

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in electronic communications bearing emotive vectors normalized to the communication's author [..gestures are provided to allow the user to emphasize text or emotions by having the visual representation animated; see col. 3, lines 27-45.]

Regarding claim 5, Hatlelid et al. discloses comprising parsing the emotive content into tokens for presentation and display of face glyph emotive representations with associated textual content on receiver computing device displays [..with selected behavioral characteristics to convey an emotional context portion of the utterance is to be interpreted by recipients; see 5, lines 13-40]

Regarding claim 6, Hatlelid et al. discloses comprising the tokenizing of the of speech of associated text and with the tokenized emotive content synthesizing author's intended meaning text strings [..communicated to the recipient through the behavioral movements of the visual representation ; see col. 7, lines 5-53].

Regarding claim 7, Hatlelid et al. discloses comprising the mapping of emotive intensity numerical value into one or more word text describing the emotive intensity value in express language which would qualify an associated emotive state with the intensity value [..the text

communicated by the sender is analyzed for its content and behavioral movements associated with the content are selected, also responsive to the user's selected behavioral characteristics; see col. 7, lines 53-67 and col. 8, lines 1-21].

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Regarding claim 8, Hatlelid et al. discloses further comprising the scanning and tokenizing of the embedded emotive content in the communications (see col. 8, lines 23-67).

Regarding claim 9, Hatlelid et al. discloses comprising parsing communications containing the emotive content using emotive grammar productions to tokenize the emotive content in textual communications (see col. 9, lines 21-54).

Regarding claim 10, Hatlelid et al. discloses comprising a method of encoding emotive vectors, each emotive vector comprising an emotive state and an associated emotive intensity normalized to the author with associated text in electronic communications [..to select a personality type for the visual representation and receives a mood intensity command the selects a mood intensity; see col. 11, lines 1-35; and text occur after the gesture the application module determines whether the gesture requires a facial movement; see col. 21, lines 1-50; and a set of characteristic of the visual representing emotional contexts within which data can be to be interpret; see col. 2, lines 1-35 and see col. 9, lines 55-67].

Regarding claim 11, Hatlelid et al. discloses further comprising structuring and synthesizing emotive parsers with productions exploiting emotive vectors encoded in textual datastreams (see col. 10, lines 5-59).

As claims 12-15 are analyzed as previously discussed with respected to claims 2-9 above.

Response to Arguments

Applicant's arguments filed on 05/24/07 have been fully considered but they are not persuasive.

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Claims 1-16 have been discussed as above.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Accordingly, the claimed invention as represented in the claims does not represent a patentable distinction over the art of record.

Conclusion

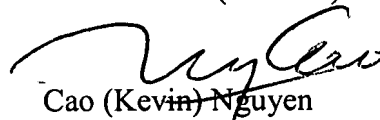
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (see PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cao (Kevin) Nguyen whose telephone number is (571)272-4053. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca can be reached on (571)272-4048. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cao (Kevin) Nguyen
Primary Examiner
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09/28/07